

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

Victoria A. Amelina, an individual; and ) Case No.: 3:14-cv-01906-WQH-NLS  
A.A.; D. S and B.S., each individuals )  
and minors by and through their )  
Guardian Ad Litem, Victoria A. )  
Amelina, ) **STIPULATION FOR  
PROTECTIVE ORDER AND  
ENTRY OF PROTECTIVE  
ORDER AS MODIFIED BY THE  
COURT**  
Plaintiff, )  
vs. ) (Dkt. No. 87)  
Manufacturers and Traders Trust )  
Company aka M&T Bank, Safeguard )  
Properties, LLC, and the Wolf Law )  
Firm, A Law Corporation. )  
Defendants. )  
)

Having reviewed the parties' joint motion for entry of a stipulated protective order, and for good cause shown, the Court **GRANTS** the parties' joint motion. Accordingly, the Court enters the following stipulated protective order as modified by the Court (*see ¶¶ 10, 14, 18*):

**STIPULATION**

WHEREAS, Defendants Manufacturers and Trader Trust Company aka

1 "M&T Bank ("M&T") and Safeguard Properties, LLC ("Safeguard")  
2 (collectively "Defendants") in the above-entitled action ("Action"), and Plaintiffs  
3 Victoria A. Amelina, an individual ("Amelina"); and A.A.; D. S and B.S., each  
4 individuals and minors by and through their Guardian Ad Litem, Victoria A.  
5 Amelina (collectively the "Plaintiffs"), both Defendants and Plaintiffs  
6 collectively as "a Party" or "Parties", possess documents and information that  
7 may have a right to protection from disclosure or dissemination, which  
8 documents and/or information have been or may be disclosed or requested in the  
9 course of discovery herein;

10 WHEREAS, the Parties may issue disclosures, serve discovery, or conduct  
11 depositions in the Action that may require responses containing or the production  
12 of confidential, financial or private information, or proprietary or trade secret  
13 information, or other information protected by applicable privacy laws  
14 ("Confidential Information" or "Protected Material", as further defined below);

15 IT IS HEREBY STIPULATED AND AGREED, by and between the  
16 Parties hereto, as follows:

17 1. The Parties may designate as "Confidential Information" any and all  
18 documents, testimony, or other evidence produced in this action that contain  
19 confidential, financial, or private information, or proprietary or trade secret  
20 information, or other information protected by applicable constitutional or  
21 privacy laws or protections. Materials containing Confidential Information shall  
22 be designated in good faith and by appropriately labeling such documents,  
23 testimony, or other evidence "Confidential" without obstructing any mark or  
24 writing which appears on the original. Documents, testimony, and other evidence  
25 also may be collectively designated as "Confidential". All Confidential  
26 Information so marked shall be treated in accordance with this Protective Order  
27 entered by the Court in this action. "Confidential Information" is the same as  
28 "Protected Material".

1           2. Confidential Information disclosed, produced, or testified to in  
2 connection with this action may be used and retained solely for the purposes of  
3 this action and this action only.

4           3. As used herein, the Confidential Information designated by the  
5 Parties may include without limitation papers, tapes, documents, discovery  
6 responses, disks, diskettes, copies, extracts, data bases and complete or partial  
7 summaries prepared from such papers, documents, photographs, or other tangible  
8 things produced by the Parties in connection with this action, as well as  
9 deposition testimony, declarations, and written discovery responses.

10          4. All Protected Material disclosed or produced, and to be disclosed or  
11 produced, in the course of discovery in this action is subject to the terms of this  
12 Protective Order, and may only be used or disclosed as described herein, and for  
13 the purposes of this action only, except as otherwise ordered by the Court.  
14 Protected Material shall not be made public by the Parties or their counsel, or be  
15 used for any purpose other than the litigation of this case, including for  
16 discovery, law and motion proceedings, and preparation for and trial(s) or appeal  
17 of this action. Any document or information which has been obtained through  
18 independent means, in the course of private investigation, or by subpoena to any  
19 government agency or other person, does not become Protected Information  
20 merely by designation by one or both of the Parties in the course of discovery in  
21 this lawsuit. Provided, however, that if a third party makes a request for  
22 confidentiality, the parties may stipulate to extend the protection of this order to  
23 documents or information produced by such third party, and such stipulation shall  
24 be in writing.

25          5. With respect to oral testimony, a Party may designate all or part of  
26 the testimony of any witness as Protected Material in the following manner:

27           a. During the deposition or hearing, a Party may orally designate all or  
28 a portion of the testimony as Confidential Information. The reporter

1 shall make a notation in the record marking the beginning and ending  
2 of all testimony so designated as "Confidential".

3 b. Alternatively, within fifteen (15) days after the court reporter serves a  
4 copy of the transcript of a deposition or hearing, a Party may identify  
5 all or part of the transcribed testimony as Confidential Information  
6 by giving written notice to counsel for deponent of the specific pages  
7 and lines of the transcript that constitute or contain Confidential  
8 Information. Until fifteen (15) days after the court reporter serves a  
9 copy of the transcript of a deposition or hearing, all deposition  
10 transcripts shall be deemed Confidential Information under the terms  
11 of this Protective Order, and there shall be no disclosure of any  
12 information contained therein in any discovery motions without  
13 complying with the terms of this Protective Order, if a Party's intent  
14 to subsequently designate Confidential Information is stated at the  
15 time of the deposition. Those portions of transcripts of depositions  
16 thereafter designated as containing Confidential Information shall be  
17 governed by the terms of this Protective Order.

18 6. Except as permitted in paragraph 14, counsel for the Parties shall  
19 keep Confidential Information confidential, and shall in no way divulge any  
20 Confidential Information, or any summary or abstract thereof, to any firm,  
21 person, or corporation, save and except to the following (hereinafter "Qualified  
22 Persons"):

- 23 a. Counsel for the respective parties and employees thereof whose  
24 functions for the purposes of prosecuting this Action require access  
25 to such Confidential Information;
- 26 b. Outside experts or consultants retained, sought to be retained, or  
27 contacted by a party or counsel hereto whose advice and  
28 consultation are being or may be used by such party in connection

1                   with preparation for trial(s), appeal(s), or depositions or for trial(s)  
2                   or appeal(s), in this action, including any motions in this Action;  
3                   c. Any party and any officer, employee, administrators, insurers,  
4                   indemnitors, or beneficiaries of a party, to the extent deemed  
5                   necessary by counsel for that party, for the litigation, trial, and/or  
6                   appeal of this Action;  
7                   d. Testifying witnesses in this Action, but only in connection with  
8                   preparation for, or testimony at, deposition or trial or via declaration;  
9                   e. The court(s) and any person employed by it or them to work on this  
10                  Action;  
11                  f. Any court reporter or videographer employed by one of the Parties  
12                  to this Protective Order for the purpose of recording depositions;  
13                  g. Employees of document copying, storing, or handling services; and  
14                  h. Any person who authored or received the Confidential Information  
15                  prior to commencement of this action.

16                  7. No Qualified Persons, other than those referred to in paragraphs  
17 6(a), 6(c), 6(e), 6(f), and 6(g), shall have access to Confidential Information  
18 without having first read this Protective Order and having acknowledged and  
19 agreed in writing, by signing an “Acknowledgment and Agreement to Be Bound”  
20 in the form attached hereto as Exhibit A, to be bound by this Protective Order.

21                  8. If a Party or its or his or her counsel is served with a subpoena or an  
22 order issued in other litigation that would compel disclosure of any Protected  
23 Material the Parties must so notify each other, in writing (by electronic mail, if  
24 possible) immediately and in no event more than three court days after receiving  
25 the subpoena or order. Such notification must include a copy of the subpoena or  
26 court order. The Party also must immediately inform in writing the party who  
27 caused the subpoena or order to issue in the other litigation that some or all the  
28 material covered by the subpoena or order is the subject of this Protective Order.

1 In addition, the Party must deliver a copy of this Protective Order promptly to the  
2 party in the other action that caused the subpoena or order to issue. The purpose  
3 of imposing these duties is to alert the interested parties to the existence of this  
4 Protective Order and to afford the Parties an opportunity to try to protect her  
5 confidentiality interests in the court from which the subpoena or order issued.  
6 The Party seeking to protect any material shall bear the burdens and the expenses  
7 of seeking a protective order from the Court and nothing in these provisions  
8 should be construed as authorizing or encouraging any party in this action to  
9 disobey a lawful directive from another court.

10       9. If a Party or her/his/its counsel learns that, by inadvertence or  
11 otherwise, they have disclosed Protected Material to any person or in any  
12 circumstance not authorized under this Protective Order, the Parties must  
13 immediately: (a) notify the other Party in writing of the unauthorized  
14 disclosures; (b) use their best efforts to retrieve all copies of the Protected  
15 Material; (c) inform the person or persons to whom unauthorized disclosures  
16 were made of all the terms of this Order; and (d) request such person or persons  
17 to execute the "Acknowledgment and Agreement to Be Bound" attached hereto  
18 as Exhibit A.

19       10. Challenging Designations. The acceptance by a Party of Protected  
20 Material shall not constitute an admission or concession, or permit any inference  
21 that the documents so designated are, in fact, Confidential Information. The  
22 Party may seek to remove from the scope of this Protective Order anything  
23 designated as Confidential Information. The Party seeking such removal shall do  
24 so in good faith and give written notice thereof to the other Party, identifying the  
25 specific material challenged and explaining the basis for the challenge. The  
26 designating party shall have ten (10) court days after the date of the written  
27 challenge to explain the basis for designation. Thereafter, the Parties shall first  
28 attempt to resolve such challenges in good faith and on an informal basis. If the

1 dispute cannot be informally resolved, the Party seeking removal of the  
 2 designation may seek appropriate relief from the Court by filing and serving a  
 3 motion with the Court seeking an order directing that the information no longer  
 4 be treated as Confidential or Protected Material. The Party seeking removal shall  
 5 have the burden of establishing grounds for removal of confidential treatment and  
 6 that the information and/or documents involved have been improperly designated  
 7 Confidential Information. Absent an agreement extending the schedule, any such  
 8 motion must be filed and served within twenty (20) court days after the  
 9 expiration of the ten (10) court day notice period set forth above. **Any**  
**agreements to extend the schedule must be submitted as a joint motion and**  
**approved by the Court. Civ. L.R. 7.2.a. Any motions to ask for judicial**  
**intervention to determine challenges to designations must also comply with**  
**the undersigned's chambers 45-day rule regarding resolution of discovery**  
**disputes. See Chmb. Rule VI.C & VII.** The Confidential Information shall  
 14 continue to be treated as such during this process. If the Party seeking the  
 15 removal of designation does not seek relief from the Court within the twenty (20)  
 16 court days set forth above **and within the 45-day period to seek judicial**  
 17 **intervention,** the challenged information shall remain Protected Material, unless  
 18 the Court shall rule otherwise.  
 19

20       11. No modification, addition, or other change of this Protective Order  
 21 shall be effective unless it has been set out in writing and signed by counsel of  
 22 record for all Parties who have signed this Stipulation, or has been reduced to an  
 23 order of the Court.

24       12. By agreeing to the procedures set forth in this Protective Order, none  
 25 of the Parties agrees to produce any specific document or waives or prejudices  
 26 any objection that Party may have to the production of any document. Nothing  
 27 contained herein shall waive Parties' right to withhold documents from  
 28 production to the extent permitted by law. In addition, the fact that a Party has

1 entered into this Protective Order is not, and shall not be argued or deemed to  
2 constitute a waiver of any objections they may have to the production of  
3 documents (including any objections based upon the attorney-client and/or  
4 attorney work-product privileges). This Protective Order does not prejudice the  
5 right of any Party to apply to the Court for an order compelling production of  
6 documents or to apply to the Court for:

- a. a further protective order relating to any discovery in this action; or,
  - b. an order declaring that a document or information designated as

9 Confidential is not Protected Material and should not be subject to this Protective  
10 Order, and likewise does not prejudice the right of any Party to object to any such  
11 application or motion.

12        13. Should Protected Material (or other contents or the information  
13 contained therein) covered by this Protective Order be disclosed in discovery  
14 motions and/or the exhibits to discovery motions, such documents, exhibits and  
15 transcripts shall be filed in sealed envelopes (or other sealed containers) marked  
16 with the title of this Action, the title of the document being filed, and a statement  
17 substantially in the following form:

“CONFIDENTIAL

19 Pursuant to the Protective Order dated \_\_\_\_\_, this envelope  
20 containing the above-titled documents filed by [the name of the party] is not to be  
21 opened nor the contents thereof displayed or revealed, except to the Court or  
22 counsel in this action.”

23 Access to these sealed envelopes or containers may be obtained by  
24 any of the Parties' counsel for any necessary or appropriate uses in this action.  
25 Counsel for the Parties shall warn other counsel whenever they intend to quote  
26 from or otherwise disclose Protected Material in open court proceedings relating  
27 to discovery motions. Such warnings shall be given at or before the hearing (but  
28 need not be given prior to the start of oral argument) such that there is sufficient

1 time and opportunity for Defendant to object to the disclosure, to ask that the  
2 courtroom be cleared of spectators and/or that the hearing be conducted in  
3 chambers.

4       14. **Filing Under Seal. Nothing shall be filed under seal, and the**  
5 **Court shall not be required to take any action, without separate prior order**  
6 **by the Judge before whom the hearing or proceeding will take place, after**  
7 **application by the affected party with appropriate notice to opposing**  
8 **counsel. The parties shall follow and abide by applicable law, including Civ.**  
9 **L.R. 79.2, ECF Administrative Policies and Procedures, Section II.j, and the**  
10 **chambers' rules, with respect to filing documents under seal. Chmb. Rule**  
11 **VII.A.**

12       15. This Protective Order shall not prevent any Party from applying to  
13 the Court for relief therefrom, or from applying to the Court for further or  
14 additional protective orders.

15       16. Nothing in this Protective Order, nor the production of anything by  
16 any Party in this action, shall be deemed a waiver of any privilege with respect  
17 thereto in any other action or proceedings, or a waiver of any privilege applicable  
18 to any information other than the specific information so produced in this action,  
19 or of the right of any party to this action to oppose production of any information.  
20 In the event of any inadvertent disclosure of any Protected Material, all Parties  
21 reserve all rights that they may have as a matter of law with respect to such  
22 inadvertent disclosure.

23       17. Within sixty (60) days following the termination of this action,  
24 including any and all appeals from a judgment, the Parties may request return of  
25 or the shredding of all Protected Material it produced in this action. If such a  
26 request is made in writing, the party to whom the request is made shall return or  
27 shred, within ten (10) days, such Protected Material, including all copies thereof.

The Party returning or shredding the Protected Material shall bear the costs of returning or shredding.

**18. Modifications. The Court may modify the protective order in the interests of justice or for public policy reasons. Chmb. Rule VII.B.**

## IT IS SO STIPULATED.

HYDE & SWIGART

Dated: October 28, 2016

By: /s/ Jessica R.K. Dorman  
Jessica R.K. Dorman, Esq.  
Attorneys for Plaintiffs

## WRIGHT, FINLAY & ZAK, LLP

Dated: October 28, 2016

By: /s/ Patricia L. Penny  
Robin P. Wright, Esq.  
Patricia L. Penny, Esq.  
Attorneys for Defendant,  
MANUFACTURERS AND TRADERS  
TRUST COMPANY aka M&T BANK

GORDON & REES, LLP

Dated: October 28, 2016

By: /s/ Kimberly D. Howatt  
Kimberly D. Howatt, Esq.  
Attorneys for Defendant, SAFEGUARD  
PROPERTIES, LLC

**EXHIBIT A**

## **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, [print or type full name],  
of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that  
I have read in its entirety and understand the Stipulated Protective Order that was  
issued by the United States District Court – Southern District of California on  
November 1, 2016 in the case of *Victoria A. Amelina et al. v. Manufacturers and*  
*Traders Trust Company aka M&T Bank et al.* Case No. 3:14-CV-001906 WQH-  
NLS. I agree to comply with and to be bound by all the terms of this Stipulated  
Protective Order. I solemnly promise that I will not disclose in any manner any  
information or item that is subject to this Stipulated Protective Order to any  
person or entity except in strict compliance with the provisions of this Order.

## ORDER

The terms of the above Stipulation are hereby ordered.

## **IT IS SO ORDERED.**

Dated: November 1, 2016

Rita L. Horner

Hon. Nita L. Stormes  
United States Magistrate Judge